

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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RICO FERRO and ANGELINA S. FERRO,

Civil No. 07 CIV 4853

Plaintiffs,

- against -

**ANSWER**

SHUTTLE AMERICA CORPORATION,  
d/b/a UNITED EXPRESS, and  
REPUBLIC AIRWAYS HOLDINGS INC.,

Defendants.

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**DEFENDANTS SHUTTLE AMERICA CORPORATION AND REPUBLIC AIRWAYS  
HOLDINGS INC.'S ANSWER TO PLAINTIFFS' COMPLAINT**

Defendants SHUTTLE AMERICA CORPORATION and REPUBLIC AIRWAYS HOLDINGS INC. (collectively "Shuttle America"), by and through their attorneys, LAW OFFICES OF PAUL A. LANGE and ADLER MURPHY & MCQUILLEN LLP, hereby answer Plaintiffs' Complaint dated June 7, 2007.

**GENERAL ALLEGATIONS**

1. Shuttle America denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph 1 of Plaintiffs' Complaint, except admits that on June 8, 2005, it operated United Express flight 7564 from White Plains, New York, to Washington Dulles International Airport, in Dulles, Virginia.
2. Shuttle America denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph 2 of Plaintiffs' Complaint

except admits that Shuttle America Corporation and Republic Airways Holdings Inc. are incorporated in Indiana and have their principal places of business in Indiana. To the extent that the remaining allegations in paragraph 2 contain conclusions of law, no response is required. To the extent that it is determined a response is required of Shuttle America, the allegations are denied and Shuttle America demands strict proof thereof.

3. Shuttle America denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph 3 of Plaintiffs' Complaint, except admits that Shuttle America Corporation is a commercial air carrier engaged in the business of transporting passengers.

4. Shuttle America denies all allegations set forth in paragraph 4 of Plaintiffs' Complaint except admits that on June 8, 2005, it operated flight 7564, a Saab 340A aircraft, FAA registration no. N40SZ, from White Plains, New York, to Washington Dulles International Airport, in Dulles, Virginia.

5. Shuttle America admits the allegations set forth in paragraph 5 of the Plaintiffs' Complaint.

6. Paragraph 6 states a conclusion of law to which no response is required. To the extent a response is required, Defendant denies all allegations in paragraph 6 of Plaintiffs' Complaint except admits that Shuttle America Corporation is a wholly owned subsidiary of Republic Airways Holdings Inc.

7. Shuttle America denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph 7 of Plaintiffs' Complaint.

8. Shuttle America denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph 8 of Plaintiffs' Complaint.

9. Shuttle America denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph 9 of Plaintiffs' Complaint.

10. Shuttle America denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph 10 of Plaintiffs' Complaint.

11. Shuttle America denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph 11 of Plaintiffs' Complaint.

12. Shuttle America denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph 12 of Plaintiffs' Complaint.

13. Shuttle America denies all allegations set forth in paragraph 13 of Plaintiffs' Complaint.

14. The allegations in paragraph 14 contain conclusions of law to which no response is required. To the extent that it is determined that a response is required of Shuttle America, the allegations are denied.

15. The allegations in paragraph 15 contain conclusions of law to which no response is required. To the extent that it is determined that a response is required of Shuttle America, the allegations are denied.

**AS FOR FIRST CLAIM FOR COMPENSATORY DAMAGES  
AGAINST DEFENDANTS BASED ON NEGLIGENCE**

16. Shuttle America incorporates herein by reference its responses to paragraphs 1 through 15 as though set forth at length herein.

17. Shuttle America denies all allegations set forth in paragraph 17 of Plaintiffs' Complaint.

18. Shuttle America denies all allegations set forth in paragraph 18 of Plaintiffs' Complaint.

19. Shuttle America denies all allegations set forth in paragraph 19 of Plaintiffs' Complaint.

### **AFFIRMATIVE DEFENSES**

In further response to Plaintiffs' Complaint, defendant Shuttle America raises and preserves the following affirmative defenses.

#### **FIRST AFFIRMATIVE DEFENSE**

The subject occurrence and any resulting damages were caused either wholly or in part by and through the acts or omissions of one or more third parties for whom or which Shuttle America is not responsible and over which or whom Shuttle America has no control, and any damages ultimately deemed recoverable by the plaintiffs against Shuttle America should be barred or reduced accordingly.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiffs fail, in whole or in part, to state a cause of action upon which relief can be granted under the law of the jurisdiction applicable to the case.

#### **THIRD AFFIRMATIVE DEFENSE**

The acts or omissions of a third party for which Shuttle America is not responsible and over which Shuttle America has no control are the sole proximate cause of the events described in Plaintiffs' Complaint.

#### **FOURTH AFFIRMATIVE DEFENSE**

Without admitting any liability on the part of Shuttle America, other persons, parties or entities which may as yet be known or unknown, or which may be discovered,

was or were contributorily negligent, comparatively at fault, or otherwise legally responsible in whole or in part, for any damages which plaintiffs may prove in this matter. Therefore, any and all recovery against Shuttle America must be extinguished or diminished by an amount proportional to such other's or others' degree(s) of negligence, fault, or other legal responsibility, as required by the applicable states law of indemnity, contribution and apportionment statutes and other applicable law.

#### **FIFTH AFFIRMATIVE DEFENSE**

Without admitting any liability on the part of Shuttle America, Plaintiffs were contributorily negligent, comparatively at fault, or otherwise legally responsible in whole or in part, for any damages, which they may prove in this matter. Therefore, any and all recovery against Shuttle America must be extinguished or diminished by an amount proportional to Plaintiffs' degree of negligence, fault, or other legal responsibility, as required by the applicable states law of indemnity, contribution and apportionment statutes and other applicable law.

#### **SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs have failed to mitigate damages as required by applicable law. Plaintiffs therefore cannot recover for losses due to their failure to mitigate damages.

#### **SEVENTH AFFIRMATIVE DEFENSE**

The injuries and damages alleged by Plaintiffs were proximately caused by unforeseeable intervening and superseding causes for which Shuttle America is not responsible or liable.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims should be dismissed because plaintiffs have failed to join one or more indispensable parties, necessary for the proper adjudication of this matter.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are preempted by Federal law.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiffs' action may be governed, in whole or in part, by the laws of jurisdictions other than New York.

**TWELFTH AFFIRMATIVE DEFENSE**

The Complaint and all claims for relief therein should be dismissed on the ground of forum non conveniens.

**THIRTEENTH AFFIRMATIVE DEFENSE**

All claims asserted in the Complaint are barred by the applicable statute(s) of limitations.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims against Shuttle America are barred because plaintiffs' assumed the risks of which plaintiffs complain.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Venue is improper pursuant to U.S.C. § 1391.

**RESERVATION OF FURTHER DEFENSES**

Defendant Shuttle America reserves the right to supplement and amend its defenses in this action, including its affirmative defenses, as necessary in light of the facts, allegations, claims and changes or modifications in the law.

WHEREFORE, defendants Shuttle America Corporation and Republic Airways Holdings Inc., pray that Plaintiffs take nothing by way of their Complaint and that this Court enter judgment in favor of Shuttle America Corporation and Republic Airways Holdings Inc. and against Plaintiffs on their Complaint; and Shuttle America Corporation and Republic Airways Holdings Inc. further pray that Plaintiffs be required to reimburse Shuttle America Corporation and Republic Airways Holdings Inc. for its costs in defending this action. Shuttle America Corporation and Republic Airways Holdings Inc. pray for relief together with any further relief this Court deems just and equitable.

**JURY DEMAND**

Without waiving its objections set forth herein, Shuttle America Corporation and Republic Airways Holdings Inc. hereby demands a trial by jury on all issues so triable.

Respectfully submitted this 17<sup>th</sup> day of August, 2007.

SHUTTLE AMERICA CORPORATION and  
REPUBLIC AIRWAYS HOLDINGS INC.

BY: 

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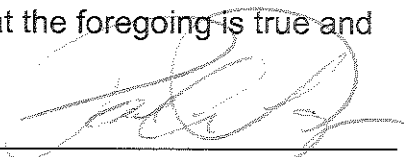
**DECLARATION OF SERVICE**

Paul A. Lange, an attorney duly admitted to practice before the Courts of the state of New York as well as before the Southern District of the U.S. District Court of New York, states the following under penalty of perjury:

1. I am Principle at the Law Offices of Paul A. Lange, LLC, counsel to Defendant SHUTTLE AMERICA CORPORATION, d/b/a UNITED EXPRESS, and REPUBLIC AIRWAYS HOLDINGS INC., in this action;
2. That on this 17<sup>th</sup> day of August, 2007, I served the enclosed Answer by mailing a true copy thereof via First Class U.S. Mail to:

Robert J. Spragg, Esq.  
Megan Benett, Esq.  
Kreindler & Kreindler, LLP  
100 Park Avenue  
New York, NY 10017

3. I declare under the penalty of perjury that the foregoing is true and correct

  
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Paul A. Lange